

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

JOSEPH OAT HOLDINGS, INC.,  
BIOTHANE CORPORATION, ROBERT  
SAX, MICHAEL HOLTZ, GRAIG  
ROSENBERGER, MARTIN KAPLAN,  
RONALD KAPLAN, JOHN MURPHY,  
AND RCM BIOTHANE, LLC,  
Plaintiffs,

v.

RCM DIGESTERS, INC. AND MARK  
MOSER,  
Defendants.

CIVIL NO. 06-4449 (NLH)

**ORDER**

**APPEARANCES:**

Richard J. Kravitz, Esquire  
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*Attorney for Plaintiffs*

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*Attorney for Defendants*

**HILLMAN**, District Judge

For the reasons expressed in the Court's Opinion filed on  
this date,

**IT IS HEREBY ORDERED** on this 24th day of August, 2007, that:

A. **Submit to Jury:** the following claims and counterclaims  
are legal in nature and not governed by a waiver of  
jury trial and, therefore, will be submitted to the  
jury:

Plaintiffs' Claims

*Count 1* - alleging breach of the Separation Agreement  
in violation of the Lanham Act;

*Count 2* - alleging unfair competition through use of  
the Biothane(R) trademark;

*Count 4* - alleging breach of contract related to the  
Separation Agreement;

*Count 5* - alleging breach of the covenant of good faith  
and fair dealing arising out of the Separation  
Agreement; and

*Count 7* - requesting a Writ of Replevin related to the  
Accounts Receivable and the Separation Agreement

Defendants' Counterclaims

*Count 1 as to Separation Agreement only* - against JOHI,  
Biothane, Mr. Sax, Mr. Murphy, and Mr. Kaplan  
alleging fraud in the inducement;

*Count 3* - against all Plaintiffs - alleging breach of  
contract with respect to the Separation Agreement;

*Count 4* - against Biothane - alleging breach of  
contract with respect to the Separation Agreement;

*Count 5 as to Separation Agreement only* - against JOHI,  
Biothane, and all of the Individual Plaintiffs  
alleging breach of the implied covenant of good  
faith and fair dealing;

*Count 6* - against JOHI and all of the Individual Plaintiffs - alleging breach of fiduciary duty;

*Count 9* - against Biothane and all of the Individual Plaintiffs - alleging trademark infringement in violation of the Lanham Act;

*Count 11* - against JOHI, Biothane, and all of the Individual Plaintiffs - alleging breach of the Confidentiality Agreement;

*Count 12* - against JOHI, Biothane, and all of the Individual Plaintiffs - alleging misappropriation of trade secrets in relation to the Confidentiality Agreement;

*Count 13* - against JOHI, Biothane, and all of the Individual Plaintiffs - alleging unjust enrichment;

*Count 14* - against JOHI and Mr. Murphy - alleging libel; and

*Count 15* - against JOHI, Biothane, and all of the Individual Plaintiffs - alleging intentional infliction of emotional distress.

B. **Not to be Submitted to Jury:** the following claims and counterclaims are governed by a waiver of jury trial provision and, therefore, will not be submitted to the

jury:

Plaintiffs' Claims

*Count 6* - alleging breach of fiduciary duty by Mr.

Moser under the Operating Agreement; and

*Count 8* - alleging fraud with regard to the Employment

Agreement, the Operating Agreement, and the Asset

Purchase Agreement.

Defendants' Counterclaims

*Count 1 as to the Asset Purchase Agreement, the*

*Operating Agreement, and the Restrictive Covenant*

*Agreement* - against JOHI, Biothane, Mr. Sax, Mr.

Murphy, and Mr. Kaplan alleging fraud in the

inducement;

*Count 2* - against JOHI - alleging breach of contract

with regard to the Operating Agreement;

*Count 5 as to the Operating Agreement and the*

*Employment Agreement* - against JOHI, Biothane, and

all of the Individual Plaintiffs alleging breach

of the covenant of good faith and fair dealing;

*Count 7* - against JOHI - alleging breach of contract

with regard to the Employment Contract;

*Count 8* - against Biothane and all of the Individual

Plaintiffs - alleging violation of the

Anticybersquatting Act with respect to the Asset

Purchase Agreement; and

*Count 10* - against JOHI, Biothane, and all of the Individual Plaintiffs - alleging unlawful interference with prospective economic advantage with regard to the Asset Purchase Agreement.

**C. Discretionary Submission to Jury on Factual Issues:** the following claims and counterclaims may at the Court's discretion be submitted to the jury to make factual findings:

Plaintiffs' Claims

*Count 3* - requesting a declaratory judgment that the Separation Agreement is valid.

Defendants' Counterclaims

*Count 16* - requesting a decree of judicial dissolution.

At Camden, New Jersey

s/ Noel L. Hillman  
NOEL L. HILLMAN, U.S.D.J.